

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4245, Jan. 17, 2001, unless otherwise noted.

Subpart 324.1—Protection of Individual Privacy

324.000 Scope of subpart.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular A-130, Revised, November 30, 2000, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended).

[70 FR 40, Jan. 3, 2005]

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR part 5b apply "when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function* * *" The key factor is whether a departmental function is involved. Therefore, the Privacy Act require-

ments apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that

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the contractor assure that each contractor employee knows the prescribed rules of conduct, and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR part 5b.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) Whenever an acquisition is determined to be subject to the Privacy Act requirements, a "system notice," prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the FEDERAL REGISTER. A copy of the "system notice" shall be attached to the request for contract or purchase request. If a "system notice" is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the contract file. If a "system notice" has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the "system notice" is published, and publication is verified by the contracting officer.

Subpart 324.2—Freedom of Information Act

324.202 Policy.

(a) The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR part 5.

(b) The contracting officer, upon receiving a FOIA request, shall follow

Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the Business and Administrative Law Division of the Office of General Counsel. The contracting officer must remember that only the FOI Officer has the authority to release or deny release of records. While the contracting officer should be familiar with the entire FOIA regulation in 45 CFR part 5, particular attention should be focused on §§ 5.65 and 5.66; also of interest are §§ 5.32, 5.33, and 5.35.

Subpart 324.70—Confidentiality of Information

324.7001 General.

In performance of certain HHS contracts, it is necessary for the contractor to generate data, or be furnished data by the Government, which is about individuals, organizations, or Federal programs. This subpart and the accompanying contract clause require contractors to prudently handle disclosure of certain types of information not subject to the Privacy Act or the HHS human subject regulations set forth in 45 CFR part 46. This subpart and contract clause address the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how it should be treated.

324.7002 Policy.

It is the policy of HHS to protect personal interests of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of the information. As a result, the "Confidentiality of Information" contract clause was developed.

324.7003 Applicability.

(a) The "Confidentiality of Information" clause, set forth in 352.224-70,